



Implementing the uniform civil code in India: Legal and policy challenges with special reference to Dawoodi Bohra community

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Abstract

A fundamental conflict between the principles of legal uniformity and the reality of cultural and religious diversity is shown in the discussion around India's Uniform Civil Code (UCC). The UCC, which has its roots in Article 44 of the Constitution, seeks to create a universal system of civil rules for all people. However, its application brings up difficult issues with minority rights, legal diversity, and the character of secularism in India. In order to objectively analyze the UCC discussion through the prisms of legal pluralism, multiculturalism, and constitutional secularism, this study takes a jurisprudential and theoretical approach. It investigates whether imposing a unified legal framework jeopardizes minority identity and threatens the coexistence of several normative systems.

The study contends that the apparent tension between uniformity and plurality is exaggerated by discussing judicial changes and comparative viewpoints. A feasible alternative is a paradigm of harmonized pluralism based on the equality and dignity found in the constitution. The study comes to the conclusion that UCC does not have to eradicate diversity; rather, it must change gradually via rights-based reform that upholds both communal identities and individual liberties.

Keywords: Legal pluralism, secularism, minority rights, uniform civil code, Indian Constitution

Introduction

A prime example of legal pluralism, in which several legal systems coexist under a single constitutional framework, is the legal system of India. Religious groups have different personal laws pertaining to marriage, divorce, succession, and family relationships, which reflects the historical and cultural variety of the nation. Although this pluralistic system allows for diversity, it also creates conflicts with the equality and justice guaranteed by the constitution. Article 44 of the Indian Constitution envisions the Uniform Civil Code (UCC), which aims to replace these disparate personal laws with a single legal framework. However, the UCC dispute is profoundly ingrained in larger issues about minority rights, cultural identity, and the essence of secularism in India and goes beyond simple legislative change.

It is crucial to place the discussion within the theoretical framework of legal pluralism in order to comprehend this conflict. The presence of several legal systems inside a single political body is referred to as legal pluralism. Griffiths (1986) ^[6] makes a distinction between strong pluralism, in which non-state normative regimes function independently of state authority, and weak pluralism, in which the state publicly accepts several legal systems. India is an example of state-managed pluralism, in which the state recognizes, controls, and occasionally modifies personal laws. Menski (2003) ^[7] extends this notion by conceptualizing Indian law as a "triangular framework" made up of social practices, religious standards, and state legislation. India's sociocultural richness is reflected in this multi-layered framework, but it also creates tensions when individual laws deviate from the equality and justice mandates of the constitution.

The concept of multiculturalism, which stresses the acceptance and defense of cultural variety within a liberal

democratic framework, is closely related to legal pluralism. According to academics like Taylor (1994) ^[12], cultural identity is essential to a person's dignity and should be safeguarded by the government. Liberal thinkers, however, warn against overly recognizing group rights when doing so compromises individual liberties. In India, constitutional safeguards for minority rights and religious freedom are manifestations of multiculturalism. However, it is difficult to balance these safeguards with the demands of substantive equality and gender justice, especially when personal laws support discriminatory behaviors.

The unique character of Indian secularism, which deviates from the Western paradigm of rigid separation between religion and state, further shapes this reconciliation. Rather, Indian secularism is based on the idea of "principled distance," which allows the government to interact with and interfere with religious activities in order to protect constitutional principles (Bhargava, 1998) ^[3]. This concept allows the state to seek change and protect diversity at the same time, especially in areas where personal laws clash with basic rights.

A wealth of multidisciplinary research in the fields of constitutional law, sociology, and legal anthropology has been produced as a result of the Indian debate over the Uniform Civil Code (UCC). Three major categories may be used to group existing literature: (i) legal pluralist criticisms, (ii) constitutional and reformist viewpoints, and (iii) multicultural and identity-based approaches. Scholars like Agnes (2011) ^[1] and Parashar (1992) ^[9] critically analyze personal laws from the perspective of gender justice from a constitutional perspective, contending that many religious laws uphold systemic injustices, especially those that target women. These academics support change to bring personal laws into line with the equality and dignity guaranteed by the constitution, either by creating a standard code or by

changing them internally. In a similar vein, Choudhry, Khosla, and Mehta (2016) ^[4] highlight the importance of courts in promoting transformative constitutionalism while placing the UCC issue within a larger context of constitutional jurisprudence.

On the other hand, legal pluralist academics like Menski (2003) ^[7] contest the notion that uniformity inevitably results in justice. According to Menski, state law, religious precepts, and sociocultural customs make up the "triangular model" of Indian law. He contends that attempts to enforce uniformity run the danger of upsetting this precarious equilibrium and might result in opposition or noncompliance. Griffiths (1986) ^[6] emphasizes that legal systems frequently function outside of official state frameworks by making a further distinction between weak and robust legal pluralism. A third line of research focuses on identity politics and multiculturalism. While Bhargava (1998) ^[3] describes the Indian paradigm of secularism as one of "principled distance," permitting selective governmental engagement in religious rituals, Taylor (1994) ^[12] highlights the significance of cultural acknowledgment for human dignity. While advocating for reform, this approach warns against homogeneity.

The absence of community-specific empirical interaction, especially with relatively understudied groups like the Dawoodi Bohra community, is still a major lacuna in the literature despite these contributions. The majority of assessments ignore internal variety, reform movements, and lived experiences in favor of treating minority populations as monolithic entities. By including perspectives from the Dawoodi Bohra community, this study fills this vacuum and grounds theoretical discussions in socio-legal reality.

In light of this theoretical framework, the discussion around the Uniform Civil Code has to be viewed as a difficult balancing act between conflicting constitutional principles. Determining whether such uniformity can survive with legal plurality, multiculturalism, and India's philosophy of secularism is more important than just replacing disparate personal laws with a consistent system. In light of this, this essay critically investigates whether the application of UCC compromises legal pluralism or whether a framework that strikes a balance between uniformity and variety may be created. Through a jurisprudential perspective, it assesses the potential for forging a synthesis between constitutional equality and cultural plurality and delves deeper into the compatibility of UCC with Indian secularism.

Legal Pluralism in the Indian Context

In India, where several normative systems coexist and interact within a single legal regime, legal pluralism must be understood within its historical, constitutional, and sociocultural framework. The Indian legal system, which reflects the nation's dedication to cultural and religious diversity, does not function as a monolithic organization but rather allows for a variety of personal laws in addition to official legislation. However, this pluralistic setup creates inherent conflicts, especially when personal laws clash with the equality, justice, and individual rights guaranteed by the constitution. As a result, studying legal pluralism in India necessitates analyzing its historical development, the interplay between private and public law, its constitutional recognition, and the internal conflicts that still influence reform discussions, such as the call for a Uniform Civil Code.

1. Historical Evolution

Legal plurality in India has its roots in the colonial era, when the British government imposed a uniform system of governance while simultaneously adopting a policy of non-interference in religious affairs. The colonial state made the decision to uphold and implement religion personal laws for various groups in aspects of family law, including marriage, divorce, inheritance, and succession. This method was officially acknowledged by Warren Hastings' Judicial Plan of 1772, which stipulated that Muslims would be subject to Islamic law and Hindus to Hindu law in aspects of personal law (Derrett, 1968) ^[5]. Indigenous legal traditions were reshaped inside a formal legal framework as a result of this program, which led to the selective codification and institutionalization of personal rules, frequently through colonial interpretation and translation of religious scriptures. A dual legal system—one secular and uniform and the other religious and community-specific—was created at the same time that the British established uniform codified rules in areas like criminal law, contracts, and evidence. What is currently known as state-managed legal pluralism in India was made possible by this cohabitation (Menski, 2003) ^[7]. But it's crucial to remember that colonial codification frequently turned dynamic customs into inflexible legal regulations, leading to conflicts between formal law and living traditions. In recognition of India's enormous cultural and religious variety, the writers of the Constitution decided to keep this diverse legal framework after independence. While a number of legislative acts in the 1950s, including the Hindu Marriage Act of 1955, significantly altered Hindu personal law, other groups' personal laws remained mostly unaltered. Simultaneously, the Constitution incorporated Article 44, which envisioned a Uniform Civil Code as a long-term goal, demonstrating a simultaneous commitment to progressive legal change and plurality (Austin, 1999) ^[2]. Therefore, a complex interaction between colonial heritage, constitutional design, and sociocultural reality can be seen in the historical development of legal plurality in India. Pluralism was maintained to uphold social stability and honor difference, but it also set the stage for continuing discussions about equality, reform, and the potential for future legal uniformity.

2. Personal Laws and State Law

The combination of secular state legislation and religion-based personal laws in India's legal system results in a unique dual legal framework. Family-related issues including marriage, divorce, succession, adoption, and maintenance are governed by personal laws that apply to the major religious communities of Hindus, Muslims, Christians, and Parsis. These laws are officially recognized and implemented by the state, sometimes through codified statutes or judicial interpretation, rather than being just private or informal conventions. For example, laws like the Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956 have significantly codified and reformed Hindu personal law. Muslim personal law, on the other hand, is based on Islamic principles and is still mostly uncoded, though its application has been influenced by some legislation interventions and court rulings. Similar laws, including the Parsi Marriage and Divorce Act of 1936 and the Indian Christian Marriage Act of 1872, regulate Christian and Parsi personal laws. In line with the larger framework of legal pluralism, this variety represents the

state's acknowledgment of religious autonomy in private affairs.

The Indian Penal Code, the Code of Civil Procedure, and the Code of Criminal Procedure are examples of uniform secular laws that function alongside these personal laws and are applicable to all people, regardless of their religious beliefs. This leads to a dual legal system in which people are regulated by a common set of secular rules in other areas while also being subject to distinct personal laws depending on their religious identification (Menski, 2003) ^[7]. However, there are certain conflicts that arise from this coexistence. Although the acceptance of personal laws promotes minority rights and cultural variety, it often leads to inconsistent legal norms, especially when it comes to gender justice and equality. Courts have been asked to resolve these conflicts more frequently, frequently striking a careful balance between preserving constitutional principles and honoring religious customs. The intricate interaction between diversity and uniformity is therefore reflected in India's connection between personal laws and state law, underscoring both the advantages and disadvantages of upholding a legally varied yet constitutionally cohesive system.

3. Constitutional Recognition

The Indian Constitution represents a sophisticated strategy that balances the desire for consistency with legal plurality. On the one hand, Article 25 protects the basic right to freedom of religion, enabling people and groups to declare, practice, and spread their faith as long as they respect morals, public order, and health. This clause affirms India's dedication to cultural and religious diversity by providing the constitutional basis for the continuation of personal laws based on religion. However, the Directive Principles of State Policy's Article 44 instructs the State to work toward ensuring that every person has access to a Uniform Civil Code. This clause expresses the constitutional aim of legal consistency and national unity, especially in civil law concerns, even if it is not subject to judicial review. The Constitution's endeavor to carefully balance preserving variety and advancing equality is demonstrated by the coexistence of these two clauses (Austin, 1999) ^[2].

The judiciary has interpreted this dual framework using the harmonious construction concept, which aims to balance Directive Principles with Fundamental Rights. While religious freedom is preserved, courts have stressed that it does not include behaviors that go against fundamental principles like equality and decency. Therefore, even if they are acknowledged, personal laws are not completely impervious to change or examination. Hence, the constitution's acknowledgment of both plurality and uniformity represents a dynamic and changing framework in which the State is entrusted with progressively balancing many legal traditions with the overall objectives of social reform, equality, and justice.

4. Internal Tensions

Legal pluralism in India is characterized by serious internal conflicts despite its acceptance of variety, especially when personal laws clash with modern constitutional concepts of equality, dignity, and gender justice. There are laws in many personal law regimes that discriminate based on gender and religion, which leads to varying legal standards for people in comparable circumstances. Judicial and academic criticism

of these discrepancies has grown, particularly in light of Article 14, which guarantees equality before the law. The status of women under personal laws is a significant subject of concern. In the past, a number of laws pertaining to inheritance, maintenance, divorce, and marriage have come under fire for upholding structural inequalities and patriarchal standards. An increasing understanding that personal laws cannot be shielded from constitutional principles, especially when they violate basic rights, is shown in judicial interventions in cases like Shah Bano and Shayara Bano.

These inconsistencies highlight a basic problem with legal pluralism: although it aims to protect religious and cultural liberty, it may also permit activities that are at odds with contemporary ideas of justice. Demands for change have grown as a result of this conflict, either by introducing a Uniform Civil Code or by gradually changing personal laws themselves (Agnes, 2011) ^[1]. The necessity for a cautious and balanced approach—one that appreciates variety while making sure that all legal frameworks adhere to the constitutional requirement of equality and social justice—is therefore highlighted by the internal conflicts within India's multiple legal system.

Minority Rights and Identity Preservation: The Dawoodi Bohra Perspective

Personal laws serve as symbols of identity, continuity, and collective membership for minority populations in addition to being legal tools. The Dawoodi Bohra community, a Shia Muslim subset with a highly structured theological framework and distinctive communal customs, is one example of this. One characteristic that sets the Dawoodi Bohras apart is their centralized religious leadership, which is crucial in governing both individual and communal life, including marriage, inheritance, and conflict resolution. In contrast to more dispersed populations, the Bohra system exhibits a type of internal legal pluralism in which state law and religious authority coexist.

This makes the UCC discussion more difficult from a theoretical standpoint. The community shows that personal laws are dynamic normative systems that may undergo internal change and adaptation rather than being static relics. The existence of intra-community pluralism is demonstrated by the fact that certain Dawoodi Bohra community members have participated in discussions on legal reform, gender rights, and religious authority. The community also demonstrates the issues surrounding the implementation of UCC. For many Bohras, institutional cohesiveness and religious identity are intimately related to personal rules. Any attempt to enforce a unified civil code can be seen as a violation of existing socio-religious systems and an infringement on communal autonomy. But the Bohra example also shows how oversimplified the 'minority vs. reform' dichotomy is. For example, women in the community could respect their cultural identity while yet wanting more equality and legal protection. This emphasizes the necessity of acknowledging the diverse viewpoints within minority groups rather than seeing them as homogenous. Therefore, a more nuanced perspective of legal pluralism—one that recognizes both the urgency of change and the significance of identity preservation—is supported by the Dawoodi Bohra experience. It implies that any approach toward UCC must be dialogic, inclusive, and mindful of the dynamics within the community.

Conclusion

Within the Indian constitutional framework, the Uniform Civil Code (UCC) and its compatibility with secularism and legal pluralism are still hotly debated topics. Supporters contend that a truly secular society must guarantee equality and prohibit discrimination, even within religious traditions, while detractors claim that enforcing a standard civil code may violate religious freedom and threaten cultural variety. By permitting selective state interference to protect constitutional ideals without totally eradicating religious sovereignty, the Indian form of secularism, which is based on the idea of "principled distance," offers a balanced approach. This implies that the UCC need not be intrinsically incompatible with secularism if it is adequately planned and executed.

However, the UCC issue cannot be boiled down to a straightforward dichotomy between plurality and conformity. This kind of framing ignores how India's judicial system is dynamic and multi-layered. The Dawoodi Bohra community serves as an example of how pluralism functions on several levels, including both internal community negotiations and the interaction between state and religious legislation. Minority organizations are made up of a variety of voices, including those calling for more gender equity and change. Therefore, the main problem is not plurality in and of itself, but rather the continuation of uneven or unreformed pluralism, where some personal law practices still clash with the equality and dignity guaranteed by the constitution. Constitutional involvement becomes both required and justified in certain situations. However, the validity and acceptability of a uniform civil code run the danger of being undermined by any attempt to enforce it without significant community input.

The paradigm of transformative constitutionalism in conjunction with dialogic pluralism offers a more practical and constitutionally valid solution. This strategy encourages progressive and collaborative change within personal law systems by viewing the state as a reformer rather than an enforcer of uniformity. It is in line with the more general objectives of Indian secularism, which uses context-sensitive intervention to strike a balance between equality and diversity.

In the end, the connection between UCC, legal pluralism, and minority rights is extremely contextual and dynamic rather than fundamentally adversarial. The UCC debate's future depends on eschewing strict dichotomies in favor of a paradigm of harmonious and participative pluralism, where community identities are respected and constitutional ideals serve as a guide for reform. By ensuring that the quest of equality does not come at the expense of variety but rather advances through it, this strategy strengthens justice and inclusion in India's legal system.

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